

ESTTA Tracking number: **ESTTA161872**

Filing date: **09/11/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91177626
Party	Defendant Dr Pepper/Seven Up, Inc.
Correspondence Address	DANIEL CHUNG, ESQ. CADBURY SCHWEPPES 900 KING STREET RYE BROOK, NY 10573  groupip@cs-americas.com
Submission	Answer
Filer's Name	Barbara A. Solomon
Filer's e-mail	bsolomon@frosszelnick.com
Signature	/Barbara A. Solomon/
Date	09/11/2007
Attachments	91177626 Answer to Notice of Opposition - SN 78889995.pdf ( 4 pages )(69043 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CLIF BAR & CO.,	)	Opposition No.: 91177626
	)	
Opposer,	)	
	)	Serial No. 78/889995
v.	)	Filed: May 23, 2006
	)	Mark: DR PEPPER MO:JOE SWEET SHOT
DR PEPPER/SEVEN UP, INC.,	)	Published December 5, 2006
	)	
Applicant.	)	<b>ANSWER TO NOTICE OF</b>
	)	<b>OPPOSITION</b>

---

Applicant Dr Pepper/Seven Up, Inc., by its counsel Fross Zelnick Lehrman and Zissu, for its answer to Opposer's Notice of Opposition states as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Notice of Opposition and therefore denies the same.
2. Denies that either the terms "shot" or "mojo" per se are distinctive of Opposer or its goods and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Notice of Opposition and therefore denies the same.
3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Notice of Opposition and therefore denies the same.
4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Notice of Opposition and therefore denies the same.

5. Admits the allegations contained in paragraph 5 of the Notice of Opposition.

6. Admits the allegations contained in paragraph 6 of the Notice of Opposition.

7. Upon information and belief, denies that Opposer's marks set forth in the Notice of Opposition are famous and otherwise denies knowledge or information sufficient to form a belief as to the truth of all remaining allegations in paragraph 7 of the Notice of Opposition and therefore denies the same.

8. Denies the allegations of paragraph 8 of the Notice of Opposition.

9. Denies the allegations of paragraph 9 of the Notice of Opposition.

10. Denies the allegations of paragraph 10 of the Notice of Opposition.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

11. The mark herein opposed and Opposer's marks have wholly distinct commercial impressions.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

12. The word "shot" is a common term in connection with beverage products and is not exclusively associated with Opposer. As such the inclusion of "shot" in both Applicant's and Opposer's marks cannot create a likelihood of confusion.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

13. Opposer's conduct is inequitable to the extent that it is seeking to assert exclusive rights in the term "shot" which is a term that is in common use in the beverage industry.

WHEREFORE, Applicant Dr Pepper/Seven Up Inc. respectfully requests that the Notice of Opposition be denied and that Application Serial Number 78/889995 for the mark DR PEPPER MO:JOE SWEET SHOT proceed to registration.

Dated: New York, New York  
September 11, 2007

FROSS ZELNICK LEHRMAN  
& ZISSU, P.C.

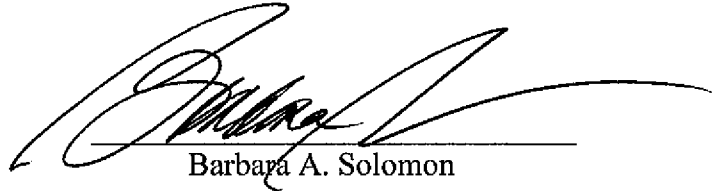
By: 

Barbara A. Solomon (BS 8845)  
866 United Nations Plaza  
New York, New York 10017  
(212) 813-5900

*Attorneys for Applicant*  
*DR PEPPER/SEVEN UP, INC.*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Answer to Notice of Opposition concerning Application Serial Number 78/889995 was served by pre-paid First Class mail upon Opposer by mailing the same to Opposer's counsel E. Lynn Perry Esq, Perry IP Group, 100 Drakes Landing Road, Suite 100, Greenbrae, CA 94904 on this 11<sup>th</sup> day of September 2007.



Barbara A. Solomon